

RESOLUTION NO. 14-161

A RESOLUTION OF THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS DETERMINING THE ADVISABILITY OF ISSUING HEALTH CARE FACILITIES REVENUE BONDS FOR THE PURPOSE OF FINANCING THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF A HEALTH CARE FACILITY AND CORPORATE OFFICE BUILDING LOCATED IN SAID CITY; AND AUTHORIZING EXECUTION OF RELATED DOCUMENTS.

WHEREAS, the City of Wichita, Kansas (the "City") is a municipal corporation, duly created, organized and existing under the Constitution and laws of the State of Kansas (the "State"); and

WHEREAS, the City Council (the "Governing Body") of the City desires to promote, stimulate and develop the general economic welfare and prosperity of the City, and thereby to further promote, stimulate and develop the general economic welfare and prosperity of the State; and

WHEREAS, pursuant to the provisions of the Kansas Economic Development Revenue Bond Act, as amended and codified in K.S.A. 12-1740 *et seq.* (the "Act"), the City is authorized to issue revenue bonds for such purposes; and

WHEREAS, pursuant to the Act, the City approved a Letter of Intent dated April 26, 2013, indicating an intent of the City to issue health care facilities revenue bonds in an aggregate principal amount of \$110,000,000 (the "Original Letter of Intent"); and

WHEREAS, pursuant to the Act and the Original Letter of Intent, the City has issued its Health Care Facilities Revenue Bonds (Presbyterian Manors, Inc.), Series IV-A, 2013, in the original principal amount of \$78,055,000 and its Taxable Health Care Facilities Revenue Bonds (Presbyterian Manors, Inc.), Series IV-B, 2013, in the original principal amount of \$7,000,000 (collectively, the "Series 2013 Bonds") to provide funds to finance or refinance the acquisition, construction and equipping of a certain health care facilities located in the City and the State of Kansas (the "Facilities"), which are currently leased by the City to Presbyterian Manors, Inc., a Kansas not-for-profit corporation (the "Corporation"); and

WHEREAS, pursuant to the Act, the City is authorized to issue bonds to pay the costs of the acquisition, construction and equipping of improvements to the portion of the Facilities located in the City (the "Facility Additions") and pay the costs of the acquisition of a corporate office building located in the City (the "Office Project"), and the Corporation has requested that the City issue revenue bonds for such purpose; and

WHEREAS, the Governing Body determines it to be advisable and in the interest and for the welfare of the City and its inhabitants that the aggregate principal amount of health care facilities revenue bonds of the City initially referenced in the Original Letter of Intent be increased to an aggregate principal amount of not to exceed \$125,000,000, and that said aggregate amount not yet issued be authorized and issued pursuant to the Act to provide funds to pay the costs of the Facility Additions and the Office Project.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

Section 1. Public Purpose. The Governing Body hereby finds and determines that the Facility Additions and the Office Project will promote, stimulate and develop the general economic welfare and prosperity of the City, and thereby further promote, stimulate and develop the general economic welfare and prosperity of the State.

Section 2. Authorization to Acquire Facility Additions and Office Project; Intent to Issue Bonds. The City is hereby authorized to proceed with the acquisition, construction and equipping of the Facility Additions and the Office Project and to issue its health care facilities revenue bonds, in one or more series (the "Additional Bonds"), to pay the costs thereof, subject to satisfaction of the conditions of issuance set forth herein. The original aggregate principal amount of Series 2013 Bonds and Additional Bonds shall not exceed \$125,000,000.

Section 3. Conditions to Issuance of Additional Bonds. The issuance of the Additional Bonds is subject to: (a) the Corporation's written acceptance of an amendment to the Original Letter of Intent containing the City's conditions to the issuance of the Additional Bonds in accordance with the City's Economic Development Incentive Policy (the "Amended Letter of Intent"); (b) the successful negotiation and sale of the Additional Bonds to B.C. Ziegler and Company, Chicago, Illinois (the "Purchaser"), which sale shall be the responsibility of the Corporation and not the City; (c) the receipt of the approving legal opinion of Gilmore & Bell, P.C. ("Bond Counsel") in form acceptable to the City, the Corporation and the Purchaser; (d) the obtaining of all necessary governmental approvals to the issuance of the Additional Bonds; and (e) the commitment to and payment by the Corporation or Purchaser of all expenses relating to the issuance of the Additional Bonds, including, but not limited to: (i) expenses of the City and the City Attorney; (ii) any underwriting or placement fees and expenses; (iii) all legal fees and expenses of Bond Counsel; and (iv) all recording and filing fees, including fees of the Kansas Court of Tax Appeals.

Section 4. Property Tax Exemption. The Governing Body hereby determines that pursuant to the provisions of K.S.A. 79-201a *Twenty-Fourth* the Office Project, to the extent purchased or constructed with the proceeds of the Additional Bonds, should be eligible for an exemption from payment of ad valorem property taxes for a period up to ten calendar years commencing with the year following the year in which the Additional Bonds are issued, provided proper application is made therefor. The Governing Body hereby conditionally approves an ad valorem property tax exemption on the Office Project, to the extent financed by proceeds of the Additional Bonds, for a five year term, with an additional five year term to be considered thereafter, at the discretion of the Governing Body, all subject to the Corporation's ongoing compliance with the City's Economic Development Incentive Policy. Any portion of the Office Project subject to ad valorem property tax exemption not occupied by the Corporation or its affiliates, shall be subject to a payment-in-lieu of taxes. Prior to making such determination the Governing Body has conducted the public hearing and reviewed the analysis of costs and benefits of such exemption required by the Act.

Section 5. Sales Tax Exemption. The Governing Body hereby determines that pursuant to the provisions of K.S.A. 79-3601 *et seq.* (the "Sales Tax Act"), particularly 79-3606(b) and (d) and other applicable laws, sales of tangible personal property or services purchased in connection with construction of the Facility Additions and the Office Project and financed with proceeds of the Additional Bonds are entitled to exemption from the tax imposed by the Sales Tax Act; provided proper application is made therefore.

Section 6. Reliance by Corporation; Limited Liability of City. It is contemplated that in order to expedite acquisition of the Facility Additions and the Office Project and realization of the benefits to be derived thereby, the Corporation may incur temporary indebtedness or expend its own funds to pay costs of

the Facility Additions and the Office Project prior to the issuance of the Additional Bonds; provided that such expenditures incurred prior to the issuance of the Additional Bonds are at the risk of the Corporation that the Additional Bonds will actually be issued. Proceeds of Additional Bonds may be used to reimburse the Corporation for such expenditures made not more than 60 days prior to the date this Resolution is adopted, and as provided by §1.150-2 of the U.S. Treasury Regulations. The Additional Bonds herein authorized and all interest thereon shall be paid solely from the revenues to be received by the City from the Facilities, the Facility Additions and the Office Project and not from any other fund or source. The City shall not be obligated on such Additional Bonds in any way, except as herein set out. In the event that the Additional Bonds are not issued, the City shall have no liability to the Corporation.

Section 7. Execution and Delivery of Documents. The Mayor is hereby authorized to execute the Amended Letter of Intent, and the City Clerk is authorized to deliver executed copies of this Resolution and the Amended Letter of Intent to the Corporation. After the Corporation has demonstrated compliance with the provisions of the Amended Letter of Intent, the Mayor and City Clerk are authorized to execute one or more bond purchase agreements with the Purchaser and the Corporation for the sale of the Additional Bonds in a form satisfactory to the City Attorney and Bond Counsel.

Section 8. Further Action. The Mayor, City Clerk and other officials and employees of the City, including the City Attorney and Bond Counsel, are hereby further authorized and directed to take such other actions as may be appropriate or desirable to accomplish the purposes of this Resolution, including, but not limited to: (a) cooperate with the Corporation in filing an application for a sales tax exemption certificate with the Kansas Department of Revenue with respect to Additional Bonds-financed property; and (b) execution on behalf of the City of the information statement regarding the proposed issuance of the Additional Bonds to be filed with the State Court of Tax Appeals pursuant to the Act.

Section 9. Effective Date. This resolution shall become effective upon adoption by the Governing Body and shall remain in effect until December 31, 2014, unless extended by affirmative vote of a majority of the Governing Body.

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ADOPTED by the City Council of the City of Wichita, Kansas, on June 10, 2014.

(SEAL)

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

APPROVED AS TO FORM:

Gary E. Rebenstorf, Director of Law

CERTIFICATE

I hereby certify that the above and foregoing is a true and correct copy of the Resolution adopted by the City Council of the City of Wichita, Kansas on June 10, 2014 as the same appears of record in my office.

DATED: June 10, 2014.

Karen Sublett, City Clerk

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